

George Foot, Penelope Purdon, Widow, and
Courthope Clayton, Esq; - - - - - } Respondents.

The CASE of the Respondents, Purdon and Clayton, (Executors, Devisees, and
Residuary Legatees of Henry Purdon, Esq; late his Majesty's Serjeant at Law in
the Kingdom of Ireland, decas'd) named as Respondents by Order of the House of
Lords, January 22. 1739.

To July 1729.
Respondent.
Bill filed.

Sat. 2 & Ann.

THE said Henry Purdon exhibited a Bill in the Court of Exchequer in Ireland, in the Name (and by late Majesty Queen Anne, it is (amongst other things) Enacted, "That from and after the 24th Day of March 1703. every Papist, or Person professing the Popish Religion, shall, from and after the said 24th Day of March, be disabled, and is hereby made incapable to buy and purchase, either in his or their own Name, or in the Name of any other Person or Persons, to his or her Use, or in Trust for him or her, any Manors, Lands, Tenements or Hereditaments, or any Rents or Profits out of the same, or any Leases or Terms thereof, other than any Term of Years not exceeding 31 Years, wherein a Rent not less than two Thirds of the improved yearly Value, at the Time of the making such Lease of the Tenements leased, shall be reserved and made payable during such Term; and that all and singular Estates, Terms, or any other Interests or Profits whatsoever, other than such Leases, not exceeding 31 Years, as aforesaid, of, in or out of such Lands, Tenements or Hereditaments, from and after the said 24th Day of March, to be bought and purchased by, or for the Use or Behoof of any such Papist, or Person or Persons professing the Popish Religion, or upon any Trust or Confidence, immediately or immediately, to or for the Benefit, Use or Advantage of any such Person or Persons professing the Popish Religion, shall be utterly void, and of none Effect, to all Intents, Constructions and Purposes whatsoever."

And setting forth, "That by another Act made in Ireland in the 8th Year of the late Queen Anne, it is (amongst other things) Enacted, "That whereas the former Acts have been most notoriously eluded by several Papists, and others in Trust for them, who have purchased several Lands, Tenements and Hereditaments, and taken Leases, contrary to the true Intent and Meaning of the said Act; and have also taken collateral and other Securities, by Mortgages, Judgments and Statutes, to cover, support and secure such their Purchases and Leases; for Remedy whereof, and for the better enforcing the Execution of the said Acts, it is Enacted, That all collateral and other Securities, by Mortgages, Judgments and Statutes Merchant, or of the Staple, or otherwise howsoever, which have been made or entered into, or hereafter shall be made or entered into, or to cover, support, secure or make good any Bargain, Sale, Confirmation, Release, Feofement, Lease, or other Conveyance, contrary to the said recited Act, shall be, and hereby are declared null and void, and of no Effect, to such Person or Persons so purchasing any of the said Lands or Tenements in Trust for, or for the Benefit of any Papist, or Person professing the Popish Religion, as likewise to any such Papist or Person, his, her, or their Heirs and Assigns respectively; and that all such Lands, Tenements and Hereditaments so conveyed or leased, or to be conveyed or leased to any Papist, or Person professing the Popish Religion, or to the Use of, or in Trust for any Papist, or Person professing the Romish Religion, contrary to the true Intent and Meaning of the said Acts, and all such collateral Securities as are or shall be made or entered into, to cover, support, secure, or make good the same, shall and may be sued for by any Protestant or Protestants, by his, her, or their proper Action, real or personal, or mixed, founded on this Act, in any of her Majesty's Courts of Law, or in any Court of Equity, where the Nature of the Case shall require it; and the Plaintiff or Defendant, in such Suit, upon Proof that such Purchase or Lease was made in Trust for any Papist, or Person professing the Popish Religion, or for his, her, or their Benefit or Advantage, by receiving the Rents, Issues or Profits thereof, or otherwise, shall obtain a Verdict and Judgment, or a Decree thereupon, and shall receive the same, and have Execution to be put into the Seisin and Possession thereof, to hold and enjoy such Lands, Tenements and Hereditaments, according to the Estate, Use, Trust, Interest or Confidence, which such Papist, or Person professing the Popish Religion, had or should have had therein, had he, she, or they been qualified to purchase, hold, or enjoy the same, subject nevertheless to all such Rents, Covenants, and Conditions, Reservations, and all Incumbrances and Portions whatsoever, as the same would have been subject to in the Hands of such Papist, or in the Hands of such Person to whom the same were sold or leased in Trust for such Papist, or Person professing the Popish Religion, or to his, her, or their Use, Benefit and Behoof; and shall also have the full Benefit of all such collateral Securities as the Party or Parties, to whom the same are or shall be made, might have had, if this or the former Act had not been made."

And suggesting that Maurice Roche, and James Roche his Son, or one of them, being seized of the Lands of Dundanion, and North and South Mabon, alias Ballymure, in the Liberties of Cork in Ireland, did, by several Deeds, and by Fine and Recovery, since the 24th of March 1703, vizi. about September 1713. convey the same, in Consideration of about 1400*l.* to the Appellant, or to his Father David Nagle, then and always profess'd Papist, in manifest Contempt of the said Laws: Wherefore the Respondent Foot, being a Protestant, born of Protestant Parents, did, by the said Bill, claim the said Lands as a Protestant Discoverer, and the Rents and Profits thereof since the pretended Purchase. And the Bill pray'd a Discovery of several fraudulent Deeds, and of several collusive Facts and Pretences therein charged, and of all other Deeds, to have them brought into Court, and to have the Benefit of the said Acts.

The Respondent Foot made and annexed to the said Bill the usual Affidavit; "That he was, and always had been, a Protestant of the Church of Ireland: And that the said Bill is not in Trust for any Papist."

The Appellant put in his first Answer, insisting, That David Nagle, his Father, had an absolute Title in him in Fee, by several Mortgage Deeds, made in 1687 and 1695; and being sensible that his Lands were to be gruelled, (or divided amongst his Sons by former Acts of Property) deviled them between the Appellant and Garrett Nagle, his Brother, whom he admits to be a Papist; but tho' the Appellant was a Papist, (which he avoids answering directly) " Yet having the Inheritance before the Property Acts, was capable of taking a Release of, and might have foreseen the Equity of Redemption; but hopes, if the Court should be of a contrary Opinion, that the Appellant may be allowed all Debts, Incumbrances, and other Interest he was intituled to before the Release of the Equity of Redemption; and also for all such Improvements as were made by him, or any deriving under him, before the Respondent Foot shall be decreed to the Possession of the Premises."

And

^{21 April 1730.}
Defendant's suit
Answer filed.

¹²

And insists, that the Lands of *Dundanion*, being an *entailed Estate*, were mortgaged to him for 300*l.* *March 22*,

1703. (*two Days before the first Popery Act took Place*) but that the Deeds are *burnt*.

sets forth several Leases, Annuities, and other Incumbrances (leaving only to perplex the Title); but insists,

If the Court should be of Opinion, that *David Nagle*, his Father, was *any ways incapable of taking the Release*.

of the *Equity of Redemption*; yet, by a late Act in *Ireland*, 'tis Enacted, That if any Mortgagor of any Lands, &c.

hath been in Possession thereof for twenty Years and upwards, and the Mortgagor, or Person intitled to the *Equity*

of *Redemption* thereof, hath permitted the Mortgagee, his Heirs or Assigns, to continue in Possession of the

mortgaged Premises without bring a *Bill to redeem*, or for an Account; and did not, before the 29th of September

1723. commence a Suit in *Equity* for *Redemption* or *Recovery* of the mortgaged Premises, and prosecute the

same with Effect, the Person claiming Interest in the said *Redemption*, and those deriving under

Possestion in Bar of any Relief; and such Mortgagor, his Heirs and Assigns, shall hold the mortgaged Pre-

mises discharged from all *Equity of Redemption*." And says, "That as the said *David Nagle*, and those deriving under

him, have been in Possession of the said Lands upwards of twenty Years before making the said Act, without ever

having any Bill brought any Bill for *Redemption* or *Recovery* of the said Statute; and con-

no other Person, brought any Bill for *Redemption* or *Recovery* of the said Statute; and con-

after the said 29th of September 1723. the Defendant humbly insists on the Benefit of the said Statute.—Says, That

ceives he is thereby intitled to hold the said Lands discharged from all *Equity of Redemption*. But whether that be the Popish

Premises, to the Appellant, in Tail Male, *with a Remainder in Tail Male*, *with a Remainder in Tail Male*, submits to the Court, or to the

Appellant's third Answer. By this Answer he confesses, "That he is of the Roman Catholick Religion, submits to the Court, or to the

Possestion." By this Answer he confesses, "That he is of the Popish Religion, or Person professing the Popish Religion,

" Religion, or makes him a Papist, or Person professing the Popish Religion." The Appellant put in his further Answer; wherein he set forth, and insisted on several sorts of Conveyances of

the said Estates, some of which appear to be inconsistent, together with others, manifestly calculated to elude both the said Acts, and others openly and directly in Opposition to them. On all which, "besides other Incum-

brances due on Record from *Maurice Roche* to the Appellant's Father; the Benefit of which he insists on—says, he can't precisely set forth what Sum was paid for the Consideration of the Release of the *Equity of Redemption*;

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^{10 Nov. 1730.} Second Answer.

^{11 July 1738.} A new Bill brought in the Name of *Henry Purdon*, and the Substancial of *Sergeant Purdon's Will*, and that he has not bequeathed one *Farthing to the Respondent*

The Appellant thought fit to procure a Bill to be filed in the said Court of Exchequer in *Ireland*, in the Name of *James Roche* to prove the Hand-writing of his Father *Maurice*, and the Deponent's Uncle *Patrick Roche*, under whom the Appellant endeavours to make Title, by Mortgage and Release of the *Equity of Redemption*. But the said *James Roche* being cross-examined, says, "That by the Threats of *Maurice Roche*, and *Philip Roche*, (his Nephew) who were in the Confederacy with the Appellant *Nagle*, the Deponent *James Roche*, the Deponent *Purdon*, and the Substancial of *Sergeant Purdon's Will*, and that he has not bequeathed one *Farthing to the Respondent*

Foot : That by Mr. *Purdon's* Death the Suit is abated, and his Will void; for no Interest being vested in him, there was nothing to operate upon with respect to these Lands; and praying a Discovery, and that the Surrier Proceedings

in the original Cause might be stayed: And to this Bill the Respondents *Purdon* and *Clayton*, and their Solicitor, and

Mrs. Morrison, were made Defendants.

The Appellant not being able by his Article of *Hoplon's Bill* to stop the original Cause (which was before set down) from being heard in its Court; The Cause came on to be heard; and the then Plaintiff, now Respondent *Foot*, having made out his Case, the Counsel for the (now) Appellant objected, *that the Representatives of Mr. Sergeant Purdon, for whom only Foot had acknowledged himself to be a Trustee, were not before the Court*; and the Cross Bill, and the Defendants Answers, were read by them to make out the Objection.

By the Opinion of the whole Court, the Objection was over-ruled.

The Court proceeded both these Days, and went thro' the Evidences on both Sides. The Cause stood again in the Paper, and it was expected that the Court would have given Judgment, and made their Decree; but all their Counsel for the Appellant, to divert the Court from giving Judgment, objected, for want of Parties; viz. the Representatives of *Garret Nagle, the Appellant's Brother, (a confit Papist) of James Nagle, and one Lambert*, in whom a supposed undetermined Lease in Trust for them was vested; but it being the last Day of Hearings before *Hilary Term*, the then Attorney-General of Counsel with the Bill, being engaged Part of that Day elsewhere, the Cause was directed to stand over till the next Term.

The Appellant being, as is supposed, advised, or perceiving the Court were strongly inclined to over-rule all his Objections, and to make a Decree in favour of the Plaintiff *Foot*, as may be collected from their Minutes, found means before the then next Term to make an Agreement with *Foot*, and thereupon to obtain a Warrant of Attorney under his Hand and Seal, dated the 1st of *January* 1738, "directed to his Solicitor, or to any other Solicitor Warrant to ad. miss the Bill. of the Court of Exchequer in *Ireland*, to consent to dismiss the original Bill; and thereby releases and discharges the Appellant from the said original Bill, and all Suits, Proceedings, and Demands in the said Bill."

On the 27th and 29th of *January*, as also on the 15th of *February*, the Court was moved, and the Motion put off till the 23d Day of *February* 1738; when on reading the former Orders and Proceedings, and hearing the Council for the Appellant, and for the Respondent, and several Affidavits, "It is ordered, That the Time for shewing "Cause against receiving the said Content or Warrant of Attorney be, and the same is hereby enlarged until the first Day of the next *Easter Term*; and it is further ordered, That the Plaintiff *George Foot* do then attend the

"Court."

Instead of waiting to take the Judgment of the Court upon the said Motion, the Appellant thought fit, before the then next *Easter Term*, to appeal from the said Orders; to that from that Time the Court of Exchequer in *Ireland* have been stopped from going on with the said Cause: Yet the Plaintiff *Hoplon* hath thought fit to proceed in his Cause, and to threaten the Defendants with Proceedings of Contempt for not answering; and in order to be sure of revering the Order, or at least to get so much longer Delay in hearing the Cause, the Appellant made no Party Respondent but the said *George Foot*, and procured an Answer from him; whereby he doth in no sort pray or iff on the Affirmance of the said Orders and Proceedings; so that the Respondents *Purdon* and *Clayton* were forced to apply by Petition to the House of Lords for an Order that they might be admitted as Respondents to defend the Appeal, which was accordingly granted. And the Respondents humbly hope, That this is a very improper Appeal, for the following, among many other,

Appeal lodged

4 April 1739.

1 Jan. 1738. "The Cause might be postponed, or that the Bill should be dismissed." *Warrant to ad. miss the Bill.*

23 Feb. 1738. "The Appellant's Solicitor gave Notice, "That when the Cause should be called, he intended to move, That

Order appealed from.

24 Jan. 1738.

I. Because the Court of Exchequer have given no Judgment as to the Motion made by the Appellant, but only given Time to the Party to shew Cause against it till the then next *Easter Term*; and it is apprehended to be unprecedented to appeal from an Order, only granting Time to shew Cause; which, if allowed of, must tend to great vexation, and infinite Delay; and nothing can be more reasonable than to allow every Court of Justice to be the proper Judges of the Time and Manner of giving their Judgment; and it is plain, this Motion was no other than an Artifice to stay the pronouncing the Decree.

II. Because on the Merits of the Cause, as a Bill cannot be dismissed without the Leave of the Court, it can hardly be imagined, that a Court of Equity would suffer a Trustee (who had in three Answers on Oath accepted of the Trust, and in all other things acted therein in two Causes then depending in that Court) to have either quitted or made a Breach of that Trust, for no other Reason or Purpose but that of eluding the Justice of that Court; which in this Case would also affect and endanger the Constitution of that Kingdom; and it is most plain from the Affidavits read upon the Motion, That the signing that Instrument was nothing else but a Collusion between the Appellant and the Respondent *Foot*, to defraud the other Respondents by a notorious Breach of Trust.

For which Reasons, among many others, the Respondents humbly hope the Appeal shall be Dismissed with Exemplary Costs.

D. RYDER.
W. NOEL.

To be Heard at the Bar of the House of
Lords, on Wednesday the 12th Day
of March, 1739-40.

The CASE of the Respondents,
George Foot, Penelope Pur-
don, Widow, and Cour-
thouse Clayton, Esq; -
Purdon and Clayton.

Joseph Nagle, Esq; - Appellant.

~~affidavit~~ ~~summons with 50~~
of the Court of Common Pleas
of the County of Middlesex